

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 24, 2015 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated October 7, 2014, a physician report (PR) dated November 5, 2014 by a physician who is a specialist in hematology, and an assessor report (AR) dated December 2, 2014 completed by a registered social worker who met the appellant once, for the purposes of the assessment.

The evidence also included the following documents:

- 1) Letter dated December 12, 2014 from the appellant's general practitioner; and
- 2) The appellant's Request for Reconsideration dated March 15, 2015.

Diagnoses

In the PR, the appellant was diagnosed by the hematologist with Hodgkin lymphoma, with an onset of May 2014, and Hepatitis C. In the letter dated December 12, 2014, the appellant's general practitioner reported that the appellant has a history of lymphoma, chronic COPD [chronic pulmonary obstructive disease], kidney stones, and gallstones. In the AR, asked to describe the impairments that impact the appellant's ability to manage daily living activities, the social worker wrote "limited strength and stamina, fatigue, unclear prognosis."

Physical Impairment

In the PR, the hematologist reported that:

- Regarding health history, Hodgkin lymphoma "is life threatening if not treated. This cancer has resulted in night sweats, weight loss and significant skin rash."
- The appellant does not require an aid for her impairment.
- For functional skills, the appellant can walk 1 to 2 blocks unaided, she can climb 5 or more steps, lift 2 to 7 kg. (5 to 15 lbs.), and she can remain seated less than an hour.
- In the additional comments: "patient finishing chemotherapy and will then need investigations to reassess cancer. Other cancer treatment may be needed. Regardless, she will need at least 6 months to recover from chemotherapy."

In the AR, the social worker indicated that:

- The appellant takes significantly longer than typical with walking indoors and walking outdoors and with climbing stairs. She is independent with standing. The appellant requires periodic assistance from another person with lifting and with carrying and holding. The social worker wrote that the appellant "cannot go up more than 5 stairs without stopping; poor stamina and significant loss of strength. Emphysema affects stamina and neuropathy affects and limits carrying and holding."
- In the section of the AR relating to assistance provided through the use of assistive devices, the social worker did not identify any of the listed items.
- In the additional comments: "other health concerns: kidney stones, gall stones, hernia, emphysema. Emphysema limits breathing, strength and stamina, it contributes to ongoing fatigue. Pain from hernia and gall stones. Abdominal pain comes and goes. Low white blood cell count affects immune system."

In her self-report, the appellant wrote that:

- She has Hodgkin lymphoma and emphysema (COPD) and her breathing is already bad and is going to get worse.
- She has so little strength that every day normal things like climbing stairs takes multiple breaks to catch her breath.
- Her cancer has spread and the chemo treatments have caused all her hair to fall out and weight loss from 130 lbs. to 92 lbs. It has also caused severe mouth sores that go down her throat and make eating and drinking, even water, to be so painful that she goes for days without eating.
- She is tired all the time. Even short walks require multiple rests.
- The medications have caused vomiting and nerve damage in both her thumbs and first fingers on both hands. She drops things all the time. It also has caused incontinence and this stops her from doing things where there is no washroom nearby.
- Her memory has gotten very bad from “chemo brain.”
- She is a recovering heroin addict and has been on methadone for over 5 years and this is a lifetime battle.

In her Request for Reconsideration, the appellant wrote:

- She cannot take pain medications because she is a recovering heroin addict and, because of her high dose and dwindling weight, it is too dangerous for her to take other things.
- She is in constant pain and is weak all the time.
- Her arms and legs have no strength for anything and even the 2-block walk to her mailbox has her out of breath, shaky, and barely able to make it home as a result of her emphysema.
- Her breathing is so bad that she has trouble getting up the stairs where she lives and has to stop at least once.

Mental Impairment

In the PR, the hematologist reported :

- The appellant has no difficulties with communication.
- The appellant has no significant deficits in her cognitive and emotional functioning.

In the AR, the social worker indicated:

- The appellant has a good ability to communicate in speaking, reading, hearing, and is poor with writing due to “nerve damage in both hands.” The social worker commented: “neuropathy with uncertain prognosis.”
- For the section of the AR assessing impacts to cognitive and emotional functioning for an applicant with an identified mental impairment or brain injury, the social worker indicated one major impact in the area of bodily functions. The appellant has moderate impacts to emotion and motivation. There are minimal or no impacts in the remaining 11 listed areas of functioning. The social worker commented: “sleep has been severely disrupted, severe mouth sores, impaired bladder control. Anxiety was triggered by cancer diagnosis and prevents [the appellant] from going out, socializing, shopping and impairs her from getting to appointments. Fatigue and limited strength and stamina affect motivation and prevent [the appellant] from doing things she would normally enjoy.”
- The appellant is independent in 4 out of 5 areas of social functioning, specifically making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. She requires periodic

support/supervision with dealing appropriately with unexpected demands, with the comment for an explanation or description of: “would need to ask for help so it doesn’t get overwhelming.”

- The appellant has good functioning in her immediate social network and marginal functioning in her extended social networks. The social worker commented that when the appellant is able to go out, she has positive interactions, but she avoids going out.
- Asked to describe the support/supervision required which would help maintain the appellant in the community, the social worker wrote that “other people help with shopping and errands.”

In her self-report, the appellant wrote that:

- She lives daily with the reality that she might not win the battle, which brings on depression.
- She has no one to go to for support or help, and she has no family, and friends that try to help but have no idea what to do or say.
- Her zest and zeal for life has been drastically diminished.

In her Request for Reconsideration, the appellant wrote:

- She cannot take meds for the depression she is suffering with because of her health and the side effects.
- She is in tears all the time just trying to deal with her health, let alone everything else.
- The mental stress and the physical changes are petrifying, the emotional levels are through the roof and she is a mess.

Daily Living Activities (DLA)

In the PR, the hematologist indicated that:

- The appellant has been prescribed medications that interfere with her ability to perform DLA, which is combination chemotherapy for 6 months starting in June 2014. The hematologist wrote that the appellant will likely need at least an additional 6 months after her treatment finishes to recover.
- The appellant is restricted on a periodic basis with the DLA personal care, meal preparation, basic housework, and daily shopping. The hematologist wrote: “symptoms vary depending on timing of chemo.”
- The appellant is restricted on a continuous basis with mobility outside the home.
- The appellant is not restricted with management of medications, mobility inside the home, use of transportation, management of finances, and social functioning.

In the AR, the social worker reported that:

- The appellant is independently able to perform every task of several listed DLA, namely: personal care (dressing, grooming, bathing, toileting, feeding self, and transfers in/out of bed and on/off chair), finances (banking, budgeting, paying rent and bills) and transportation (getting in and out of a vehicle, using public transit, using transit schedules and arranging transportation), with a comment that the appellant is “able to drive her own car, doesn’t use public transit.”
- The appellant is independently able to perform most tasks of some of the DLA, specifically: meals (meal planning, food preparation and safe storage of food), and medications (taking as directed and safe handling and storage).
- The appellant requires periodic assistance from another person with the tasks of the DLA basic housekeeping (including laundry), with a note that she “needs help lifting and carrying; can’t

vacuum, gets help with washing floors, doesn't have strength to complete.”

- The appellant requires periodic assistance with carrying purchases home when shopping, with a note that “lifting and carrying is difficult”, with cooking (note: “doesn't always have needed strength and stamina”), and with filling/refilling prescriptions (note: “anxiety re going out”).
- The appellant requires continuous assistance from another person with the task of going to and from stores since “anxiety prevents going to stores.”

In the letter dated December 12, 2014, the appellant's general practitioner wrote that the appellant is unable to work.

In her self-report, the appellant wrote:

- She is tired all the time and any activity, even grocery shopping, requires a nap.
- She is not capable of working right now.

In her Request for Reconsideration, the appellant wrote:

- Mentally, physically and emotionally, she cannot work and she does not know when she will be able to and neither does anyone else.
- Just because she does not need someone to help her all the time right now, this minute, does not mean that she might not need it tomorrow or the next day, etc.

Need for Help

In the AR, the social worker reported that the help required for DLA is provided by family and friends. The social worker wrote that the appellant “is currently managing with help from family and friends.” In the section of the AR relating to assistance provided through the use of assistive devices, the social worker did not identify any of the listed items as being applicable.

Additional Information

In her Notice of Appeal dated March 31, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she would like to get a new letter from her doctor possibly explaining things better and adding any new pertinent information.

At the hearing, the appellant provided an additional letter from her general practitioner dated April 27, 2015 in which he wrote that:

- The appellant has a history of lymphoma, COPD, kidney stones and gall stones.
- The appellant has been under treatment for her lymphoma. She has completed chemo and undergoing further workup.
- The appellant feels tired all the time, insomnia, difficult time eating, losing weight.
- The appellant has been very stressed. She complains of feeling depressed. She is unable to focus and concentrate.
- The appellant is unable to work.

At the hearing, the appellant stated:

- The focus is on her physical disability. She cannot go up a flight of stairs without stopping. She cannot walk 2 blocks without resting.
- She realizes that her general practitioner has more information about all of her medical conditions but the ministry had recommended that she have the hematologist complete the PR since he is a specialist for her cancer.

- She has lost weight with the chemo treatments. She is done with the treatments, her hair and eyelashes have grown back, and she does not know yet if the cancer is in remission. There is still cancer present in her lung and chest.
- When she first applied for PWD, she was reaching the end of her chemo treatment. She completed 12 of the recommended 16 treatments. She could not go through more treatments because of her size. The doctor said it would not be safe. They had to put a port into her jugular vein to administer the chemotherapy because all her other veins collapsed.
- She still has mouth sores, which are like cracks and sores on her tongue and down her throat. She needs to have fluids to drink at all times. There is a mouth wash that helps but the cost is not covered by the ministry and she has “made do.”
- Physically, she is getting sicker. Even if her cancer is in remission, she still has COPD which is getting worse. She had been trying to quit smoking but they advised against quitting during the chemo treatments because of the extra stress involved. She is trying to quit again. Her health continues to deteriorate.
- She also has major depression, which is just starting to get dealt with. She is fighting on so many fronts and it is exhausting. She is a heroin addict and it does not make the other issues easier. She used to be on the streets and she knows that she can end up there again at any time. She is worried about taking medications for depression because of the possible interaction with her methadone program. Her new methadone doctor is a psychiatrist and she is just starting to get help with sorting out the many issues from her past.
- She had to go through a PET test and she was told that her chest “is a mess.” Further tests are scheduled for July 2015.
- With the Hodgkin lymphoma, she has experienced weight loss and strength loss. With the COPD, she cannot do much. When she has to go shopping, she will plan to do it all in one day. She has inhalers that she carries with her for the COPD and the only reason she does not have oxygen is that she cannot afford it.
- She has lost the feeling in her fingers. She cannot make it to the bathroom in time because of the lasting effect of the chemo treatments on her muscles. Her vision has also been affected.
- She has an older dog that is her friend and her support and they can walk together since the dog is overweight and walks slowly too.
- She lives with her landlord who carries the groceries in but she still does all the housework because that comes with paying cheap rent. She tries to do everything in moderation. She no longer washes the floors down on her hands and knees and just uses a wet mop and takes breaks because she has no strength.
- The social worker was mistaken in the AR because she does not have any family willing to help her.
- It took her a long time to get the tests done to find out about the cancer because no one believed her. It took her 5 years to prove that she was clean and, by then, there was a large lump under her arm which had been ignored because she is a drug addict.

The ministry did not attend the hearing and relied on its reconsideration decision.

Admissibility of Additional Information

The additional letter from the general practitioner contained information about the impact of the appellant’s medical conditions raised and considered at reconsideration. The panel admits this information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

- (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Section 2(2) of the EAPWDR defines prescribed profession as follows:

- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner, or
 - (b) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,
- if qualifications in psychology are a condition of such employment.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by her fatigue, loss of strength and shortness of breath from the combination of her serious health conditions including Hodgkin lymphoma plus the side effects of required chemotherapy treatments, Hepatitis C, chronic COPD, kidney stones, and gallstones. In her Request for Reconsideration, the appellant argued that she is in constant pain and is weak all the time. The appellant pointed out that she cannot take pain medications because she is a recovering heroin addict and, because of her high dose of methadone and dwindling weight, it is too dangerous for her to take other things. The appellant argued that her arms and legs have no strength for anything and the 2-block walk to her mailbox has her out of breath, shaky, and barely able to make it home as a result of her COPD. The appellant argued that her breathing is so bad that she has trouble getting up the stairs where she lives and has to stop at least once.

The ministry's position is that there is not sufficient information from the hematologist and social worker to confirm that the appellant has a severe physical impairment. The ministry wrote that the hematologist assessed the appellant as able to walk 1 to 2 blocks, climb 5 or more stairs, lift between 5 and 15 lbs. and remain seated for less than an hour. The ministry wrote that, when assessing the

appellant's mobility and physical ability, the social worker indicated that the appellant requires periodic assistance with lifting and carrying and holding but no information is provided about how often the appellant requires assistance. The ministry wrote that while the social worker reported that the appellant takes significantly longer with walking indoors and walking outdoors and climbing stairs, she did not provide information about how much longer it takes the appellant. The ministry wrote that the appellant's inability to work at this time is not a relevant consideration since the PWD application is not intended to assess employability or vocational abilities as employability is not an eligibility criterion for designation as a PWD.

Panel Decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a "severe" impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment, the ministry must consider both the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the hematologist, the general practitioner and the social worker.

In the PR, the hematologist diagnosed the appellant with Hodgkin lymphoma and Hepatitis C and wrote that Hodgkin lymphoma "is life threatening if not treated" and "this cancer has resulted in night sweats, weight loss and significant skin rash." In the letter dated December 12, 2014, the appellant's general practitioner reported that the appellant has a history of lymphoma as well as chronic COPD, kidney stones, and gallstones. In the additional comments to the AR, the social worker reported that the appellant's "emphysema limits breathing, strength and stamina, it contributes to ongoing fatigue." At the hearing, the appellant stated that her health is deteriorating. Even if the chemotherapy treatments are over and her cancer is in remission, which is not certain, she still has COPD which is getting worse. She had a PET test and she was told that her chest "is a mess" and further tests are scheduled for July 2015. She has inhalers that she carries with her for the COPD and the only reason she does not have oxygen is that she cannot afford it.

The hematologist reported in the PR that the appellant can walk 1 to 2 blocks unaided, she can climb 5 or more stairs, lift 5 to 15 lbs., and she can remain seated less than an hour. At the hearing, the appellant stated that she cannot go up a flight of stairs without stopping and she cannot walk 2 blocks without resting. As well, the chemotherapy has caused nerve damage in both her thumbs and first fingers on both hands and she drops things all the time. It also has caused incontinence and this stops her from doing things in the community when there is no washroom nearby.

In the AR, the social worker indicated that the appellant takes significantly longer than typical with walking indoors and walking outdoors and with climbing stairs and she is independent with standing. The social worker wrote that the appellant "cannot go up more than 5 stairs without stopping; poor stamina and significant loss of strength. Emphysema affects stamina and neuropathy affects and limits carrying and holding." Although the social worker reported that the appellant requires periodic assistance from another person with lifting and with carrying and holding, she did not provide further comments to indicate how often or how long the assistance is required, or how much longer it takes the appellant with her mobility. In the section of the AR relating to assistance provided through the

use of assistive devices, the social worker did not identify any of the listed items. Also, as discussed in more detail in these reasons for decision under the heading “Restrictions in the Ability to Perform DLA”, the limitations to the appellant’s physical functioning do not appear to have translated into significant restrictions to her ability to manage DLA.

In her Request for Reconsideration, the appellant wrote that she is in constant pain and is weak all the time and she cannot take pain medications because she is a recovering heroin addict. With her high dose of methadone and low body weight, it is too dangerous for her to take other things. The appellant wrote that mentally, physically and emotionally, she cannot work and she does not know when she will be able to and neither does anyone else. In the additional letter from the general practitioner dated April 27, 2015, he added that the appellant feels tired all the time, insomnia, difficult time eating, losing weight, and she is unable to work. As for searching for work and/ or working, the panel finds that the ministry reasonably concluded that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in Section 2 of the EAPWDR.

Given the emphasis on the appellant’s ability to work and the absence of detail regarding impacts to the appellant’s physical functioning, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant’s position is that a severe mental impairment is established by the evidence of the impacts to her cognitive and emotional functioning from depression. The appellant wrote in her self-report that she lives daily with the reality that she might not win the battle against the cancer and she has no one to go to for support or help, and she has no family, and friends that try to help but have no idea what to do or say. The appellant wrote that her “zest and zeal for life” has been drastically diminished and she cannot take meds for the depression she is suffering with because of her health and the side effects. The appellant argued that the mental stress and the physical changes are petrifying, the emotional levels are “through the roof,” and she is a mess.

The ministry’s position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry wrote that the hematologist did not assess significant deficits to the appellant’s cognitive and emotional functioning; however, the social worker indicated that the appellant has a major impact to bodily functions and moderate impacts to emotion and motivation. The ministry pointed out that while the general practitioner indicated that the appellant has no difficulties with communication, the social worker indicated that the appellant is good with speaking, reading and hearing but poor with writing due to nerve damage in both hands.

Panel Decision

The hematologist did not diagnose a mental disorder in the PR, but the appellant wrote in her Request for Reconsideration that she is suffering with depression and her general practitioner wrote in his April 27, 2015 letter that the appellant has been very stressed, she complains of feeling depressed, and she is unable to focus and concentrate. In the PR, however, the hematologist reported that the appellant has no significant deficits in her cognitive and emotional functioning. In the AR, the social worker indicated one major impact in the area of bodily functions, described as “sleep has been severely disrupted, severe mouth sores, impaired bladder control.” The appellant has moderate impacts to emotion and motivation, described by the social worker as: “anxiety was

triggered by cancer diagnosis and prevents [the appellant] from going out, socializing, shopping and impairs her from getting to appointments. Fatigue and limited strength and stamina affect motivation and prevent [the appellant] from doing things she would normally enjoy.” There are minimal or no impacts assessed in the remaining 11 listed areas of functioning. The impacts identified by the social worker have been related by the social worker primarily to the appellant’s physical diagnoses rather than to a mental health diagnosis *per se*. Likewise, the social worker reported that the appellant has a good ability to communicate in speaking, reading, hearing, and is poor with writing due to “nerve damage in both hands” and that she has “neuropathy with uncertain prognosis.”

The social worker reported that the appellant is independent in 4 out of 5 areas of social functioning, specifically making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant requires periodic support/supervision with dealing appropriately with unexpected demands, described by the social worker as: “would need to ask for help so it doesn’t get overwhelming” but not indicating how often the support/ supervision is required. The appellant has good functioning in her immediate social network and marginal functioning in her extended social networks, with a comment that when the appellant is able to go out she has positive interactions but she avoids going out.

The appellant wrote in her self-report that she lives daily with the reality that she might not win the battle against the cancer and she has no one to go to for support or help, that she has no family and friends that try to help but have no idea what to do or say. The appellant wrote that her “zest and zeal for life” has been drastically diminished and she cannot take meds for the depression. The appellant argued that the mental stress and the physical changes are petrifying, the emotional levels are “through the roof,” and she is a mess. The panel notes that the appellant stated at the hearing that her new methadone doctor is a psychiatrist and she is just starting to get help with sorting out the many issues from her past, but no reports or assessments from a mental health specialist were provided on the appeal.

Given the lack of a definitive mental health diagnosis and impacts to the appellant’s cognitive, emotional functioning that clearly relate to a mental disorder, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant’s position is that her physical and mental impairments directly and significantly restrict her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person, including her landlord and her dog.

The ministry’s position is that, while the ministry acknowledged that the appellant has serious medical issues, the information from the prescribed professionals does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods. The ministry wrote that the majority of the listed tasks of DLA are performed independently by the appellant and, for those tasks that require periodic assistance, the social worker has not provided sufficient information to establish that there is a significant restriction in the appellant’s ability to perform these activities.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant’s severe impairment directly and significantly restricts her DLA, continuously or periodically

for extended periods. In this case, the hematologist and the social worker are the prescribed professionals. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the appellant's circumstances, the hematologist reported in the PR that the appellant has been prescribed medications that interfere with her DLA, specifically combination chemotherapy for 6 months starting in June 2014, and that she will likely need at least another 6 months to recover. The hematologist reported that the appellant is restricted on a periodic basis with the DLA personal care, meal preparation, basic housework, and daily shopping and specified that her "symptoms vary depending on timing of chemo." The appellant is restricted on a continuous basis with mobility outside the home. At the hearing, the appellant acknowledged that her chemotherapy treatments are finished but stated that the prognosis is still uncertain. The hematologist indicated that the appellant is not restricted with management of medications, mobility inside the home, use of transportation, management of finances, and social functioning.

In the AR, the social worker reported that the appellant is independently able to perform every task of several listed DLA, namely: personal care, finances and transportation, with a comment that the appellant is "able to drive her own car, doesn't use public transit." The appellant is independently able to perform most tasks of some of the DLA, specifically: meals (meal planning, food preparation and safe storage of food), and medications (taking as directed and safe handling and storage). The appellant requires periodic assistance from another person with the DLA basic housekeeping (including laundry), with a note that she "needs help lifting and carrying; can't vacuum, gets help with washing floors, doesn't have strength to complete." The appellant requires periodic assistance with carrying purchases home when shopping, with a note that "lifting and carrying is difficult", and with cooking (note: "doesn't always have needed strength and stamina"), and also with filling/refilling prescriptions (note: "anxiety re going out"); however, the social worker does not define how often or for how long the appellant requires this periodic assistance.

The social worker indicated in the AR that the appellant requires continuous assistance from another person with the task of going to and from stores since "anxiety prevents going to stores" but the appellant stated at the hearing that, when she has to go shopping, she will plan to do it all in one day. The appellant stated further that she lives with her landlord who carries the groceries in but she still does all the housework because that comes with paying cheap rent. She tries to do everything in moderation. She no longer washes the floors down on her hands and knees and just uses a wet mop and takes breaks because she has no strength. In her Request for Reconsideration, the appellant wrote that just because she does not need someone to help her all the time right now, this minute, does not mean that she might not need it tomorrow or the next day. In both his letter dated December 12, 2014 and in the letter dated April 27, 2015, the appellant's general practitioner concluded that the appellant is unable to work.

The panel finds that the evidence demonstrates that the appellant manages most of her DLA without assistance and that the ministry reasonably determined that there is insufficient information to allow the ministry to determine that the periodic assistance or support that is required for some tasks is required for extended periods of time. Therefore, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professionals to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or

periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person or her dog to perform DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The ministry wrote that the appellant does not require an assistive device or the services of an assistance animal.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the AR, the social worker reported that the help required for DLA is provided by family and friends and wrote that the appellant "is currently managing with help from family and friends," but the appellant clarified at the hearing that she does not have any family willing to help her. The appellant stated that she has an older dog that is her friend and support, although she acknowledged that the dog does not qualify for an assistance animal. In the section of the AR relating to assistance provided through the use of assistive devices, the social worker did not identify any of the listed items as being applicable.

The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and therefore confirms the decision.